

¹ Plaintiff's objection to the Report and Recommendation was due on March 4, 2008. Pursuant to Section II(A)(1)(f) of the Electronic Filing Policies and Procedures Manual, "a filing must be completed before 6:00 p.m. Central time on the date it is due . . . to be considered timely filed." Plaintiff's 10:04 p.m. objection was thus untimely.

administrative law judge erred in his assessment of Dr. Nael's opinion and that he failed to undergo the necessary consideration of the factors set forth in 29 C.F.R. § 404.1527.

In assigning less than controlling weight to the opinion of a treating physician, an administrative law judge must consider specific factors. These include:

the length and nature of the treatment relationship, frequency of examinations, the degree to which the opinion is supported by relevant evidence, the opinion's consistency with the record as a whole, and whether the opinion is that of a specialist.

Hamlin v. Barnhart, 365 F.3d 1208, 1215 n. 7 (10th Cir. 2004); *see also* 20 C.F.R. § 404.1527(d)(2)-(6). However, as the Tenth Circuit has explained, an administrative law judge is not required to expressly apply in his decision each of the six factors of 20 C.F.R. § 404.1527 when deciding what weight to give to a medical opinion. *Oldham v. Astrue*, 509 F.3d 1254, 1258 (10th Cir.2007).

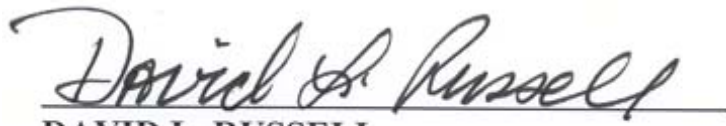
The Court concludes, consistent with the opinion of the Magistrate Judge, that the administrative law judge complied with these requirements. "This case is not like those cases . . . involving a wholesale failure on the part of the [administrative law judge] to give any reasons for his decision." Accordingly, and for the reasons set forth in the Report and Recommendation, the Court concludes that the administrative law judge did not violate the treating physician rule and that her decision in that regard was supported by substantial evidence.

Plaintiff makes a second objection to the Report and Recommendation, stating in a single sentence that the administrative law judge's opinion is not supported by substantial evidence. The Court disagrees, and again adopts the findings of the Magistrate Judge in the Report and Recommendation.

Having conducted a *de novo* review of the matter in accordance with 28 U.S.C. § 636(b)(1), the Court agrees with the analysis and recommendation of Magistrate Judge Argo and accepts, adopts, and affirms the Report and Recommendation. The Court has considered all the arguments and claims of Plaintiff and concludes that the arguments and claims are without merit and do not warrant the remand of this matter to the Commissioner.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Doyle W. Argo is hereby ADOPTED and the decision of the Commissioner is AFFIRMED. Judgment shall be entered accordingly.

IT IS SO ORDERED this 6th day of March 2008.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE